

**Texas Department of Insurance, Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

**MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION****PART I: GENERAL INFORMATION**

Requestor's Name and Address:  TEXAS INJURED WORKER'S PHARMACY P.O. BOX 170624 ARLINGTON, TX 76003-0624	MFDR Tracking #: M4-07-4130-01
	DWC Claim #:
	Injured Employee:
	Date of Injury:
Respondent Name and Representative Box:  TEXAS MUTUAL INSURANCE CO Rep Box 54	Employer Name:
	Insurance Carrier #:

**PART II: REQUESTOR'S POSITION SUMMARY AND PRINCIPAL DOCUMENTATION**

Requestor's Position Summary: "...Texas Mutual has determined that there is no maximum allowable reimbursement (MAR) for prescription medication and that it can pay a fair and reasonable amount based on its estimation of what is usual and customary in the market. Texas Mutual has not provided any documentation to date to show how it determined usual and customary or what its purported "research" showed, much less how it determined fair and reasonable...Division Rule §134.503...provides that the MAR is the lesser of the *provider's* usual and customary charge or the amount determined by a formula provided in §134.503(a)(2)...The pharmacy in this case did in fact bill Texas Mutual for its usual and customary charges for the prescribed medication...This amount exceeded the reimbursement amount afforded by the formula. Therefore, the MAR in this case is the amount determined by the formula..."

## Principal Documentation:

1. DWC 60 package
2. Total amount sought - \$172.08
3. EOB's (DWC-62s)
4. DWC-66
5. Signed statement from Paulette M Salvant, PIC, Owner dated 9/16/08

**PART III: RESPONDENT'S POSITION SUMMARY AND PRINCIPAL DOCUMENTATION**

Respondent's Position Summary: "...the pharmacy's U&C charge is the amount it normally charges the walk-in customers that have no insurance or are covered by private health insurance...Most pharmacies participate in networks in which compensation is governed by contract. For transactions subject to such contracts, the requestor could simply provide the contract pricing information and the number of transactions arising under each contract, rather than information for each transactions...When Texas Injured Workers' Pharmacy has sought reconsideration in the past, Texas Mutual tried to obtain proof that the requestor was not charging Texas Mutual more than it charged non-workers' compensation customers, but was unable to obtain this information. Specifically, Texas Mutual asked the requestor to sign an affidavit affirming that the price charged to Texas Mutual was no more than the price charged for the same drug to non-workers' compensation payors. The requestor did not return the requested affidavit, which strongly suggests that the requestor did charge Texas Mutual more than it charged other payors for the disputed prescription drug...Texas Mutual paid the requestor the Scripnet contract price for the disputed prescription drug, because this amount is Texas Mutual's best estimate of the requestor's U&C charge for this drug to persons outside the workers' compensation system...Using the best information available to it, Texas Mutual has established a proxy for the requestor's usual and customary charge to customers outside the workers' compensation system and paid the requestor that amount because it was lower than the formula amount in Rule 134.503(a). Texas Mutual recognizes that the requestor's actual usual and customary charge may be different (higher or lower) than Texas Mutual's proxy value, and thus, Texas Mutual asked the requestor to establish that price in an affidavit..."

## Principal Documentation:

1. DWC 60 package

**PART IV: SUMMARY OF FINDINGS**

Eligible Dates of Service (DOS)	Pharmaceuticals in Dispute	Denial Codes	Amount in Dispute	Amount Ordered
03/08/06, 04/10/06	Carisoprodol 350MG Tablets (30 Units)	W10, 517, W4, 891	\$16.74	\$16.74
03/08/06, 04/10/06	Hydrocodone/APAP 10/650 Tablets (90 Units)	W10, 517, W4, 891	\$82.84	\$0.00
03/08/06, 04/10/06	Lidoderm 5% Patch (30 Units)	W10, 517, W4, 891	\$72.50	\$0.00
<b>Total /Due:</b>				\$16.74

**PART V: REVIEW OF SUMMARY, METHODOLOGY AND EXPLANATION**

Texas Labor Code § 413.011(a) – (d), titled *Reimbursement Policies and Guidelines*, and 28 Tex. Admin. Code (TAC) §134.503 adopted to be effective January 3, 2002; amended to be effective March 14, 2004, set out the reimbursement guidelines for pharmaceutical services. This dispute was filed in the form and manner as prescribed by 28 TAC §133.307 and is eligible for Medical Dispute Resolution.

Payments for prescriptions dispensed to the claimant on dates of service 03/08/06, 04/10/06 were reduced with payment exception codes:

- “W10 – No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology”
- “517 – Paid at est. U&C based on research, Labor Code Sec 413.043, and 2002 PFG, 29 Tex: Admin Code 134.502 to electronic bill...”
- “W4 – No additional reimbursement allowed after review of appeal/reconsideration”
- “891 – The insurance company is reducing or denying payment after reconsideration”.

Texas Injured Workers’ Pharmacy is the Health Care Provider:

- Texas Labor Code §401.011(22) defines "health care provider" as a health care facility or health care practitioner.
- Texas Labor Code §401.011 (19) (E) defines “health care” to include a prescription drug, medicine, or other remedy.
- Texas Labor Code §401.011 (20) defines “health care facility” as a hospital, emergency clinic, outpatient clinic, or other facility providing health care.
- Texas Labor Code §401.011 (21) defines “health care practitioner” as an individual who is licensed to provide or render and provides or renders health care; or a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor.

Establishing Texas Injured Workers’ Pharmacy Usual and Customary Charge:

The usual and customary charge for individual pharmaceuticals is established by the provider (pharmacy or pharmacist).

- A statement signed by Paulette M Salvant, PIC, Owner Texas Injured Workers’ Pharmacy which attests to the following:
  - “Please be advised that Texas Injured Workers’ Pharmacy is solely a workers’ compensation provider and does not provide services to any other sector of the community. Our usual and customary charge is in accordance with...rule 134.503 (a) reimbursement methodology (1) and (2) A, B, C as we have not negotiated any contracts for our service.”
- Relative to dates of service 03/08/06 and 04/10/06 on the table of disputed services, the following apply:
  - Former 28 TAC §134.801 (e), repeal effective May 2, 2006, states in pertinent part “The health care provider that provided the treatment(s) and/or services shall submit its own bill...”
  - Former 28 TAC §134.801 (g), repeal effective May 2, 2006, states “Any entity, including a health care provider, that submits a bill for a health care provider shall: (1) submit the bill for an amount that does not exceed the health care provider’s usual and customary charge for the treatment(s) and/or service(s) provided in accordance with §413.011 of the Texas Labor Code,...”

Texas Injured Workers’ Pharmacy provided numerous explanations of benefits (EOBs) submitted to them by workers’ compensation carriers other than the respondent. The EOBs contained information on amounts billed for various pharmaceuticals on various dates of service. In its review of these EOBs, the division noted amounts billed for pharmaceuticals that were the same or similar to those in dispute, and whether the dates of service were reasonable contemporary to the dates of service in dispute. The division finds that Texas Injured Workers’ Pharmacy billed their usual and customary charge to Texas Mutual Insurance Company for Carisoprodol 350MG Tablets for the dates of service in dispute. The division also finds that Texas Injured Workers’ Pharmacy did not provide documentation sufficient to substantiate that the amounts billed for Hydrocodone/APAP 10/650 Tablets and Lidoderm 5% Patch represent Texas Injured Workers’ Pharmacy’s usual and customary charge for Hydrocodone/APAP 10/650 Tablets and Lidoderm

5% Patch for the dates of service in dispute.

#### Reimbursement

28 TAC §134.503(a)(1) – (3): The maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of:

- (1) The provider's usual and customary charge for the same or similar service;
- (2) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) in effect on the day the prescription drug is dispensed.
  - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee = MAR;
  - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = MAR;
  - (C) A compounding fee of \$15 per compound shall be added for compound drugs; or
- (3) a negotiated or contract amount.

The position statements of both the requestor and respondent indicate that no negotiated or contract amount existed between Texas Mutual Insurance Company and Texas Injured Workers' Pharmacy, the total allowable reimbursement is determined as follows:

DATE	MEDICATION	§134.503 (a) (1)	§134.503 (a) (2)	MAR is Lesser of (a)(1) & (a)(2), (a)(3) irrelevant because no contract exists	PAID	Additional Due
03/08/06 04/10/06	Carisoprodol 350MG Tablets (30 Units)	\$58.44	\$47.36	\$47.36	\$30.62	\$16.74
03/08/06 04/10/06	Hydrocodone/APAP 10/650 Tablets (90 Units)	Not Supported	\$212.58	Cannot be established	\$129.74	\$0.00
03/08/06 04/10/06	Lidoderm 5% Patch (30 Units)	Not Supported	\$418.18	Cannot be established	\$345.68	\$0.00
						\$16.74

#### Conclusion

Because Texas Injured Workers' Pharmacy failed to sufficiently substantiate that the amount billed for Hydrocodone/APAP 10/650 Tablets and Lidoderm 5% Patch represents its usual and customary charge for Hydrocodone/APAP 10/650 Tablets and Lidoderm 5% Patch, the MAR cannot be established. However, since Texas Injured Workers' Pharmacy sufficiently supported that the amounts billed for <supported drugs> represented their usual and customary charge for Carisoprodol 350MG Tablets, the division was able to establish the MAR by determining the lesser of the usual and customary charge, the AWP formula. A contracted rate was not factored in because both parties in dispute agree that there is no contract.

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the Request is entitled to \$16.74 additional reimbursement.

#### **PART VI: GENERAL PAYMENT POLICIES/REFERENCES**

Texas Labor Code § 401.011	28 TAC §133.305	28 TAC §134.503	
Texas Labor Code § 413.011	28 TAC §133.307	28 TAC §134.1	28 TAC §134.801

#### **PART VII: DIVISION ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031 and §413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby **ORDERS** the respondent to remit to the requestor the amount of \$16.74 plus applicable accrued interest per Division rule at 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

\_\_\_\_\_  
Authorized Signature

Marguerite Foster  
\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

10/14/10  
\_\_\_\_\_  
Date

## **PART VIII: YOUR RIGHT TO REQUEST AN APPEAL**

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (twenty) days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in 28 TAC § 148.3(c).

Under Texas Labor Code §413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 Rules if the total amount sought does not exceed \$2,000. If the total amount sought exceeds \$2,000, a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code §413.031.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**